

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

LESIA REDMAN,)	
Plaintiff,)	
v.)	Civil Action No.
KFC, INC., et al.,)	2:08-cv-00065-MEF
Defendants.)	
)	

**DEFENDANTS' MOTION TO STRIKE
FICTITIOUS PARTY DEFENDANTS**

KFC U.S. Properties, Inc. and JRN, Inc., individually and on behalf of the improperly named defendant KFC, Inc. ("Defendants"), move the Court to strike from the pleadings the Plaintiff's assertion of claims against fictitious party defendants.

1. This action was initially filed in the Circuit Court of Pike County, Alabama. Named as Defendants were "KFC, Inc." and "fictitious defendants A through F." The *Alabama Rules of Civil Procedure* recognize the use of fictitious party defendants. See Rule 9(h), *Alabama Rules of Civil Procedure*.

2. On January 29, 2008, this matter was removed to this Court (Doc. 1). Thereafter, the Plaintiff amended her complaint and again asserted claims against fictitious parties (Doc. 7, ¶ 3).

3. Upon removal to this Court, the *Federal Rules of Civil Procedure*, and not the *Alabama Rules of Civil Procedures*, apply. The *Federal Rules of Civil Procedure* do not recognize fictitious party practice. See *CSX Transp., Inc. v. United Transp. Union, et al.*, 236 Fed. Appx. 562, 563 n.1 (11th Cir. June 7, 2007); *New v. Sports and Recreation*,

Inc., 114 F.3d, 1092, 1094 n.1 (11th Cir. 1997); *Bosarge v. T Mobile USA, Inc.*, No. 07-0012, 2008 U.S. Dist. LEXIS 20952, at *6-7 n.2 (S.D. Ala. March 17, 2008); *Murphy v. Southern Energy Homes, Inc.*, No. 06-618, 2008 U.S. Dist. LEXIS 19839, at *1 n.1 (M.D. Ala. March 6, 2008); *Portis v. Wal-Mart Stores, Inc.*, No. 07-0557, 2007 U.S. Dist. LEXIS 77939, at *3-4 n.1 (S.D. Ala. Oct. 19, 2007).

4. Accordingly, any fictitious party defendants are not properly named in this matter and should be struck from the pleadings.

WHEREFORE, the premises considered, KFC U.S. Properties, Inc. and JRN, Inc., individually and on behalf of the improperly named defendant KFC, Inc. move the Court to strike from the pleadings any fictitious party defendants and any claims against fictitious party defendants.

This the 3rd day of April, 2008

/s/ John G. Smith

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected upon any CM/ECF participants electronically and I have mailed by United States Postal Service a copy of the foregoing document to any non-CM/ECF participants this the 3rd day of April, 2008:

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Respectfully submitted,

/s/ John G. Smith
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